United Nations

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 60/23 of 23 November 2005 and met at United Nations Headquarters from 3 to 13 April 2006.

2. In accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held two meetings, the 249th meeting, on 3 April, and the 250th meeting, on 12 April. The Working Group of the Whole, established at the 249th plenary meeting, held six meetings on 3 April (1st and 2nd meetings), 4 April (3rd meeting), 5 April (4th meeting), 7 April (5th meeting) and 12 April (6th meeting). Informal consultations were also held on 3, 5 and 6 April.

4. On behalf of the Secretary-General, the session was opened by the Under-Secretary-General for Legal Affairs, the Legal Counsel.

5. At its 249th meeting, on 3 April, the Special Committee, bearing in mind the terms of the agreement regarding the election of the officers reached at its session in 1981[1] and taking into account the results of the pre-session informal consultations among its Member States held on 20 March 2006, elected its Bureau, as follows:

Chairman:
Eduardo J. Sevilla Somoza (Nicaragua)

Vice-Chairpersons:
Ilgar Mammadov (Azerbaijan)
Karim Medrek (Morocco)
Emma Romano Sarne (Philippines)

Rapporteur:
Thomas Fitschen (Germany)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group of the Whole.

7. The Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Václav Mikulka, acted as Secretary of the Special Committee. The Principal Legal Officer of the Division, George Korontzis, acted as Deputy Secretary of the Special Committee and Secretary to the Working Group of the Whole. The Codification Division provided the substantive services for the Special Committee and the Working Group.

8. Also at its 249th meeting, the Special Committee adopted the following agenda (A/AC.182/L.122):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.

5. Consideration of the questions referred to in General Assembly resolution 60/23 of 23 November 2005, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

9. General statements touching upon all or upon several items were made at the 249th meeting, as well as, in some instances, prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the present report.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it all the related reports of the Secretary-General,[2] in particular the most recent report, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions" (A/60/320), and the 1998 report on the matter containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162 of 15 December 1997 (A/53/312); a revised working paper submitted by the Russian Federation at the 2004 session entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures"[3] and a revised working paper submitted by the Libyan Arab Jamahiriya at the 2002 session of the Special Committee on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1).[4]

11. Furthermore, also with regard to the question of the maintenance of international peace and security, the Special Committee had before it an informal working paper submitted by the Russian Federation at the 1997 session of the Committee, entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1);[5] a working paper submitted by the Russian Federation at the 1998 session of the Special Committee, entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1);[6] a proposal submitted by the delegation of Cuba at the 1997 session of the Special Committee, entitled "Strengthening o. he role of the Organization and enhancing its effectiveness" (A/AC.182/L.93)[7] and an addendum thereto, submitted at the 1998 session (A/AC.182/L.93/Add.1);[8] a revised proposal also submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.99);[9] and a revised working paper submitted by Belarus and the Russian Federation at the 2005 session of the Committee containing a further revised version of a draft resolution of the General Assembly.[10]

12. Concerning the topic peaceful settlement of disputes, the Special Committee had before it a working paper submitted by Egypt at the current session containing a draft resolution on the commemoration of the sixtieth anniversary of the International Court of Justice (A/AC.182/L.123) (see para. 49 below).

13. In addition, the Special Committee had before it a version of the working paper submitted by Australia, Japan, the Republic of Korea, Thailand and Uganda, as revised at the 2005 session regarding the working methods of the Special Committee.[11]

14. At its 250th meeting, on 12 April 2006, the Special Committee adopted its report on its 2006 session.

Chapter II
Recommendations and decision of the Special Committee

15. The Special Committee submits to the General Assembly:

(a) As regards the question of the maintenance of international peace and security, in particular the strengthening of the role of the Organization and enhancing its effectiveness, the recommendation contained in paragraph 38 below;

(b) As regards the question of the peaceful settlement of disputes, the draft resolution contained in paragraph 51 below, bearing in mind paragraph 52 below;

(c) As regards the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, the recommendation contained in paragraph 60 below;

(d) As regards the question of working methods of the Special Committee, the decision contained in paragraph 73 below.

Chapter III
Maintenance of international peace and security

A. Implementation of the Charter provisions related to assistance to third States affected by sanctions

16. The Special Committee considered the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by sanctions during the general exchange of views held at the 249th meeting, on 3 April 2006, as well as during the 2nd and 5th meetings of the Working Group of the Whole, on 3 and 7 April, respectively.

17. Delegations reiterated the importance that they attached to the consideration of the topic, which had been referred to the Special Committee by the General Assembly for consideration on a priority basis.[12] Some delegations voiced their support for the continuing consideration of the matter within the context of the Sixth Committee of the General Assembly, including through the establishment of a Working Group of the Sixth Committee. While recognizing the usefulness of the discussions relating to the application of sanctions in the Special Committee, some delegations also emphasized the need to pay attention to discussions in other forums, such as the informal working group on general issues on sanctions of the Security Council and the analytical support and sanctions monitoring team established in accordance with Security Council resolution 1526 (2004). Reference was also made to the interdepartmental process started by the Secretary-General to develop proposals and guidelines which would be available to the Security Council.

18. Some delegations called attention to the negative consequences of sanctions on civilian populations and third States and stressed the importance of minimizing those effects. Some delegations called for the effective application of the provisions of Article 50 of the Charter, which they did not consider as merely procedural. They pointed out that practical and timely assistance to third States affected by the application of sanctions would contribute to an effective and comprehensive sanctions regime as a whole. A view was expressed that the primary responsibility of the Security Council in applying sanctions was accompanied by a parallel responsibility towards affected third States. The need to take immediate steps to implement paragraph 108 of the World Summit Outcome (General Assembly resolution 60/1) was stressed. Concerning the possible measures, a view was expressed in favour of devising a system to assess the impact of preventive or enforcement measures on third States and exploring practical ways to provide assistance to those States, including the use of multichannel financial arrangements and economic assistance to minimize the losses incurred. Support was also expressed for the idea of establishing a fund financed from assessed contributions. However, the view was also expressed that Article 50 of the Charter was purely procedural and did not require the Council to take action.

19. While realizing that sanctions could entail unintended negative effects on civilian populations and third States, some delegations expressed the view that sanctions can be and have been effectively applied against States, entities and groups of individuals that threaten international peace and security. They welcomed the recognition in the 2005 World Summit Outcome that sanctions remain an important tool under the Charter to maintain international peace and security

without recourse to the use of force and the resolve to ensure that sanctions are carefully targeted in support of clear objectives and that they are implemented in ways that balance effectiveness against the possible adverse consequences, including socio-economic and humanitarian consequences, for populations and for third States. They also welcomed the continued recourse by the Security Council to targeted sanctions, which preserve the effectiveness of sanctions while minimizing their unintended consequences. The Security Council was encouraged to continue to explore ways to improve the monitoring of the implementation and effects of sanctions.

20. Some delegations suggested that the Security Council, with the support of the Secretary-General, should ensure that fair and clear procedures exist for the listing and de-listing of individuals and entities from sanctions lists, as well as the granting of humanitarian exemptions.

21. Some delegations made reference to recent conferences and workshops on issues relating to the application of sanctions. In particular, mention was made of a study on "Strengthening Targeted Sanctions through Fair and Clear Procedures", which was presented at United Nations Headquarters on 30 March 2006.

B. Consideration of the revised working paper submitted by the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures"

22. During the general exchange of views held at the 249th meeting, on 3 April 2006, the Russian Federation referred to its revised working paper, entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures", as reproduced in paragraph 70 of the report of the Special Committee for 2004. The sponsor delegation emphasized that the revised text reflected many of the comments and suggestions made by delegations at the previous sessions of the Special Committee, and called for its adoption at the current session of the Special Committee and for its submission to the General Assembly at its sixty-first session. It also indicated its flexibility as to whether the document should take the form of a declaration of the General Assembly or an annex to a resolution of the General Assembly.

23. At the same meeting, some delegations emphasized that sanctions had to be applied in accordance with strict and objective criteria, especially in conformity with provisions of the Charter of the United Nations and international law. They should be used cautiously and be imposed only after the exhaustion of all peaceful means of settlement of disputes and in cases of a threat to the peace, a breach of the peace or commission of an act of aggression. Other relevant issues, such as the need for time frames, clear and precise objectives, accountability, periodic review and timely and objective assessment of the effects of sanctions, were highlighted. The importance of establishing fair and clear procedures for the listing and de-listing of individuals and other entities on sanctions lists, as well as for the granting of humanitarian exemptions, was stressed.

24. Some delegations expressed support for the revised working paper and acknowledged the efforts of the sponsor in accommodating the views of other delegations in the revised working paper.

25. Some other delegations pointed out that sanctions and their related aspects continued to be considered in various other forums within the United Nations. References were made to the relevant working groups of the Security Council, in particular the informal working group of the Security Council on general issues of sanctions, as well as to the follow-up of the 2005 World Summit Outcome. References were also made to the activities carried out by some members of the European Union to strengthen targeted sanctions through clear and fair procedures. Some delegations reiterated their position that the Special Committee should avoid dealing with issues that are currently under examination elsewhere in the United Nations.

26. At the 2nd meeting of the Working Group, on 3 April 2006, the sponsor delegation observed that the purpose of the working paper was to set out the main principles and guidelines for the implementation of sanctions by the Security Council, and recalled the main provisions contained in its revised working paper. In the view of the sponsor, there was no duplication between the work of the Special Committee and the work of other bodies on sanctions, and there was no need for further paragraph-by-paragraph discussion of the text.

27. Some delegations reiterated the expression of their support for recommending the revised working paper to the General Assembly for its adoption, while declaring their flexibility as to the format. Others continued to express their reservations concerning the appropriateness of addressing this issue.

28. At the 5th meeting of the Working Group, on 7 April 2006, the sponsor delegation reported on the results of the informal consultations held on the revised working paper. It stated that many delegations supported the adoption of the revised working paper by the Special Committee as soon as possible and favoured the format of a General Assembly declaration, while showing flexibility in this respect. However, other delegations did not support the revised working paper on the grounds that the Special Committee should not duplicate the work of other organs of the United Nations. The sponsor indicated its intention to hold further consultations in the hope that consensus for the adoption of the revised working paper could be reached.

C. Revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions

29. The revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1), contained in paragraph 89 of the 2002 report of the Special Committee,[13] was referred to in the general exchange of views held at the 249th meeting, on 3 April 2006, as well as during the 2nd, 3rd and 5th meetings of the Working Group of the Whole, held on 3, 4 and 7 April, respectively. The sponsor delegation recalled that the Special Committee had considered the revised working paper at its previous sessions, in 2002 and 2003, and that some central

elements of the proposal were also contained in the proposal by the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures" (see sect. B above). Accordingly, the sponsor delegation suggested that the proposal remain on the agenda of the Special Committee and be considered along with the proposal of the Russian Federation.

30. At the 5th meeting of the Working Group, some delegations expressed support for the salient points raised in the proposal, in particular the provision of possible payment of compensation to target and/or third States for damage done by sanctions found to have been unlawfully imposed.

D. Consideration of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations"

31. During the general exchange of views held at the 249th meeting of the Special Committee, on 3 April 2006, the sponsor delegation, the Russian Federation, referred to the working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations",[14] which it had submitted to the Special Committee at its 1998 session. The sponsor delegation reiterated that the aim of the proposal was to improve the United Nations peacekeeping operations, based on the development of the generally recognized legal framework of those operations. It recognized that the character of peacekeeping operations was undergoing an evolution and stated that the transfer of the proposal to the Special Committee on Peacekeeping Operations for further consideration could be envisioned.

32. Some delegations expressed support for the basic tenet of the working paper and its continued consideration in the Special Committee. It was observed that discussions on this issue by other bodies of the Organization should not preclude the Special Committee from considering peacekeeping from a legal perspective. The importance of summing up lessons learned from the experience of the Organization in this field was noted. Other delegations reiterated that the Special Committee should avoid dealing with issues that are currently examined elsewhere.

33. At the 2nd meeting of the Working Group, also on 3 April 2006, the sponsor delegation noted that its proposal was aimed at identifying the key legal elements of a legal framework for peacekeeping operations, as well as specifying the basic principles of peacekeeping, including such principles as non-interference in the internal affairs of the States parties to the conflict, neutrality and impartiality. The sponsor delegation also reiterated its views expressed at the 249th meeting of the Special Committee (see para. 31 above).

F. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

34. The Special Committee considered the item "Strengthening of the role of the Organization and enhancing its effectiveness" during the general exchange of views held at its 249th meeting, on 3 April 2006, as well as during the 3rd and 5th meetings of the Working Group of the Whole, on 4 and 7 April 2006.

35. Some delegations expressed support for the working papers submitted by Cuba (A/AC.182/L.93 and Add.1)[15] and observed that the documents would complement work undertaken by other bodies in the area of reform and revitalization of the General Assembly as the main legislative and representative organ of the Organization with a view to ensuring that it could fully carry out the tasks entrusted to it under the Charter of the United Nations. While support was expressed for the consideration of proposals relating to the reform of the United Nations, it was also pointed out that they should not duplicate work undertaken elsewhere or involve a review of the basic structure of the Charter. Other delegations further stressed that it would not be appropriate for the Committee to attempt to redistribute the functions of the organs of the United Nations in the area of maintenance of international peace and security or limit the prerogative of the Security Council.

36. The sponsor delegation reiterated that the thrust of its proposals aimed to analyse the respective functions and competencies assigned to the General Assembly and the Security Council under the Charter in the area of maintenance of international peace and security with a view to enhancing the role of the General Assembly in that field. It was stressed that the Charter assigned a broad role for the General Assembly in maintaining international peace and security and that the working papers contained basic criteria for the revision of the procedures and practices of the General Assembly and other organs of the United Nations in this field. The sponsor delegation also recalled that the Non-Aligned Movement had expressed concern regarding the encroachment by the Security Council on issues falling within the functions of the General Assembly. It also referred to advisory opinions of the International Court of Justice and resolutions of the General Assembly relevant to its proposals, in particular resolution 377 (V) of 3 November 1950, "Uniting for peace".

37. The sponsor delegation further observed that this topic was fully within the mandate of the Special Committee and that the consideration of the working papers would not constitute duplication of the work of other bodies but would complement it.

38. The Special Committee recognized the value of considering measures within the United Nations with a view to ensuring the revitalization of the General Assembly in order to effectively and efficiently exercise the functions assigned to it under the Charter of the United Nations.

F. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

39. At the 3rd meeting of the Working Group of the Whole, on 4 April 2006, the sponsor delegation indicated that there was a general agreement concerning the need to reform the United Nations, which included democratization and improving procedures that would accelerate achieving United Nations objectives. The proposal submitted by the Libyan Arab Jamahiriya was relevant at a time of reform of the Organization because it aimed to analyse the relationship between the Security Council and the General Assembly in the area of the maintenance of international peace and security. The proposal also focused on the question of the unanimity of the permanent members of the Security Council and defining decisions of a procedural nature under the Charter of the United Nations.

40. The sponsor delegation maintained that the elements contained in its proposal were still valid and that it should remain on the agenda of the Special Committee. The sponsor delegation expressed the hope that the Special Committee would recommend that the Sixth Committee consider the legal aspects of the proposal and make the necessary recommendations to the General Assembly.

G. Consideration of the revised working paper submitted by Belarus and the Russian Federation

41. During the general exchange of views held at the 249th meeting of the Special Committee, on 3 April 2006, the representative of the Russian Federation, as co-sponsor of the proposal, referred to the revised working paper, submitted by Belarus and the Russian Federation at the 2005 session of the Special Committee,[16] in which it was recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. The co-sponsor emphasized the need to keep the proposal on the agenda of the Committee since it might become the basis for further discussions on the issue of the use of force in the light of the 2005 World Summit Outcome.

42. The representative of Belarus, the other co-sponsor, stressed that the advisory opinion of the Court would contribute to the uniform interpretation and application of the provisions of the Charter of the United Nations regarding the use of force and to the strengthening of the mechanisms of the maintenance of international peace and security envisaged by the Charter.

43. Some delegations reiterated their support for the proposal which, in their view, would contribute to the strengthening of the principle of the non-use of force or threat of force contained in the Charter.

44. At the 2nd meeting of the Working Group of the Whole, on 3 April 2006, the representative of the Russian Federation, as co-sponsor of the proposal, reiterated his views expressed at the 249th meeting of the Special Committee (see para. 41 above). The other co-sponsor, the representative of Belarus, stated that the revised

working paper would assist the Security Council in carrying out its primary responsibility for the maintenance of international peace and security. Both co-sponsors, while not insisting on the discussion on the revised proposal at the current session of the Committee, reiterated the need to keep the proposal on the agenda of the Committee.

45. At the 2nd and 3rd meetings of the Working Group, on 3 and 4 April 2006, some delegations supported the revised proposal and the speedy finalization of its consideration by the Committee. Concern was expressed over attempts to justify the unilateral use of force without authorization by the Security Council, which was considered a violation of the Charter. The question was raised, however, whether the current wording of the proposal, in view of recent developments, including the 2005 World Summit debate, took sufficient account of the many variables that the Court would have to consider when forming an opinion on the issue at stake. It was suggested that the request for the Court's advisory opinion contain two subsequent questions; the first regarding the legality of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. The second is on the legal consequences of the use of force if the Court considers such a use to be illegal.

46. One delegation expressed opposition to the consideration of the revised proposal.

Chapter IV
Peaceful settlement of disputes

47. The Special Committee considered the item "Peaceful settlement of disputes" during the general exchange of views held at its 249th meeting, on 3 April, as well as during the 4th and 5th meetings of the Working Group of the Whole, held on 5 and 7 April 2006, respectively.

48. During the general exchange of views, delegations expressed their support for the use of the existing mechanisms at early stages to peacefully settle their disputes, as well as for the principle of free choice of means enshrined in the Charter of the United Nations. References were made to the sixtieth anniversary of the inaugural sitting of the International Court of Justice on 18 April 1946 and strong support was expressed for the Court as the principal judicial organ of the United Nations. The promotion of a culture of prevention and the strengthening of the conflict preventive capacity of the United Nations was emphasized, including the role of the Secretary-General in that regard.

49. At the 4th meeting of the Working Group, on 5 April, Egypt introduced a working paper containing a draft resolution entitled "Commemoration of the sixtieth anniversary of the International Court of Justice" (see A/AC.182/L. 123). The draft resolution reads as follows:

> "*The General Assembly*,
>
> "*Mindful* that, in accordance with Article 2, paragraph 3, of the Charter of the United Nations, all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,
>
> "*Bearing in mind* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations[17] and the Manila Declaration on the Peaceful Settlement of International Disputes,[18]
>
> "*Recognizing* the need for universal adherence to and implementation of the rule of law at both the national and international levels,
>
> "*Recalling* that the International Court of Justice is the principal judicial organ of the United Nations, and reaffirming its authority and independence,
>
> "*Noting* that 2006 marks the sixtieth anniversary of the inaugural sitting of the International Court of Justice,
>
> "*Noting with appreciation* the special commemorative event held at The Hague in April 2006 to celebrate the anniversary,
>
> "*Noting* a significant increase in the recourse to the Court by States,[19]
>
> "*Noting with appreciation* the measures adopted by the Court to work with maximum efficiency,
>
> "1. *Solemnly commends* the International Court of Justice for the important role that it has played as the principal judicial organ of the United Nations over the past sixty years in adjudicating disputes among States, and recognizes the value of its work;

"2. *Expresses its appreciation* to the Court for the measures adopted to operate an increased workload with maximum efficiency;

"3. *Stresses* the desirability of finding practical ways and means to strengthen the Court, taking into consideration, in particular, the needs resulting from its workload;

"4. *Encourages* States to continue considering recourse to the Court by means available under its Statute, including accepting, if they have not done so, its jurisdiction in accordance with Article 36, paragraph 2, of the Statute;

"5. *Calls upon* States to continue contributing to the Secretary General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice on a voluntary basis;

"6. *Stresses* the importance of promoting the work of the International Court of Justice, and urges that efforts be continued through available means to encourage public awareness in the teaching, study and wider dissemination of the activities of the Court in the peaceful settlement of disputes, in view of both its judiciary and advisory functions."

50. At the same meeting, while delegations expressed their support for the general thrust of the draft resolution and emphasized the importance of its timely adoption, a number of amendments were proposed, including aligning operative paragraphs 4 and 5 with the relevant paragraphs of the 2005 World Summit Outcome.

51. The sponsor delegation conducted informal consultations on 5 and 6 April 2006 and held bilateral consultations with other delegations. At the 5th meeting of the Working Group, the sponsor introduced a number of oral amendments to the draft resolution and indicated that no financial implications were envisaged. The draft resolution as amended reads as follows:

"Commemoration of the sixtieth anniversary of the International Court of Justice

"*The General Assembly*,

"*Mindful* that, in accordance with Article 2, paragraph 3, of the Charter of the United Nations, all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

"*Bearing in mind* the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations[20] and the Manila Declaration on the Peaceful Settlement of International Disputes,[21]

"*Recognizing* the need for universal adherence to and implementation of the rule of law at both the national and international levels,

"*Recalling* that the International Court of Justice is the principal judicial organ of the United Nations, and reaffirming its authority and independence,

"*Noting* that 2006 marks the sixtieth anniversary of the inaugural sitting of the International Court of Justice,

"*Noting with appreciation* the special commemorative event held at The Hague in April 2006 to celebrate the anniversary,

"1. *Solemnly commends* the International Court of Justice for the important role that it has played as the principal judicial organ of the United Nations over the past sixty years in adjudicating disputes among States, and recognizes the value of its work;

"2. *Expresses its appreciation* to the Court for the measures adopted to operate an increased workload with maximum efficiency;

"3. *Stresses* the desirability of finding practical ways and means to strengthen the Court, taking into consideration, in particular, the needs resulting from its workload;

"4. *Encourages* States to continue considering recourse to the Court by means available under its Statute, and calls upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute;

"5. *Calls upon* States to consider means of strengthening the Court's work, including by supporting the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice on a voluntary basis, in order to enable the Fund to carry on and to strengthen its support to the countries which submit their disputes to the Court;

"6. *Stresses* the importance of promoting the work of the International Court of Justice, and urges that efforts be continued through available means to encourage public awareness in the teaching, study and wider dissemination of the activities of the Court in the peaceful settlement of disputes, in view of both its judiciary and advisory functions."

52. At the same meeting, the Working Group recommended by consensus that the Special Committee present the draft resolution for adoption by the General Assembly.

Chapter V

Proposals concerning the Trusteeship Council

53. During the general exchange of views held at the 249th meeting of the Special Committee, on 3 April 2006, references were made to paragraph 176 of the 2005 World Summit Outcome (General Assembly resolution 60/1), in which the General Assembly recommended that, considering that the Trusteeship Council "no longer meets and has no remaining functions", Chapter XIII of the United Nations Charter and references to the Council in Chapter XII be deleted. While support was expressed for such a deletion, the point was also made that the amendments to the Charter should be considered in the overall context of the reform of the Organization and should be dealt with cautiously.

Chapter VI

Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

54. During the general exchange of views held at the 249th meeting of the Special Committee, on 3 April 2006, as well as during the 4th and 5th meetings of the Working Group of the Whole, on 5 and 7 April 2006, the delegations welcomed the ongoing efforts by the Secretary-General aimed at reducing the backlog in the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and supported continuation of their publication. Some delegations emphasized the usefulness and importance of both publications, since, as a part of the historical record of the practice of United Nations organs, they helped to preserve the institutional memory of the Organization. Support was expressed for the conclusions contained in the report of the Secretary-General on these publications (A/60/124). The progress made towards making both publications available on the Internet without costs to the United Nations was also welcomed. Some delegations highlighted the need for the enhanced cooperation with academic institutions and for making voluntary contributions to the trust funds established for the publications. It was also announced by a Member State that a contribution was made to the trust fund for updating the *Repertoire*, which was viewed as an important tool for improving the working methods and the transparency of the Council by compiling its practices.

55. At its 4th meeting, on 5 April 2006, the Working Group was briefed by the Secretariat on the status of preparation of the *Repertory* and the *Repertoire*.

56. Concerning the *Repertory*, it was pointed out that progress had been made in the preparation of studies under various volumes pertaining to Supplements Nos. 7, 8 and 9 and in the placing on the Internet of studies in their various language versions. Several departments, in the framework of the Interdepartmental Committee on Charter Repertory, had expressed their willingness to continue involving interns and accepting assistance from academic institutions in the preparation of studies on certain Articles. Accordingly, several francophone academic institutions had been contacted to inquire about their interest in this matter and practical measures were being developed in order to put such cooperation in place. While no contributions had been made to the Trust Fund for the *Repertory*, Member States were reminded of the possibility to make such contributions.

57. Concerning the *Repertoire*, it was pointed out that progress had been achieved in the preparation of chapters of various Supplements, which had already been made available as advance versions on the Internet. The Secretariat continued to implement the "two-track" approach, which allowed it to focus on the Security Council's contemporary practice while concurrently ensuring progress in the coverage of the Council's practice during the previous decade. This approach had also included streamlining the format of the *Repertoire*. It was also pointed out that progress had been made possible by the utilization of the resources from the trust fund for the updating of the *Repertoire* and the use of associate experts. An appeal was made to Member States to continue such support.

58. Some delegations commented on the reports made by the Secretariat and asked questions. Concern was expressed regarding the remaining backlog of certain volumes of the *Repertory*, in particular volume III. It was pointed out that both

publications and all parts of each of them were equally important and should be afforded equal attention.

59. In their response, the representatives of the Secretariat provided details concerning the role of interns and staff members in the preparation of texts and assured the delegations that each and every part of the publications conform to United Nations standards. Collaboration with academic institutions and the use of interns were viewed as the most practical solution given the current financial situation. It was also clarified that translations of the *Repertory* in all official languages would require a special mandate.

60. The Special Committee on the Charter of the United Nations recommends that the General Assembly:

(a) Commend the Secretary-General for the progress made in the preparation of studies of the *Repertory of Practice of United Nations Organs*, including the increased use of the internship programme of the United Nations and the wider cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council*;

(b) Reiterate its call for voluntary contributions to the trust fund for the updating of the *Repertoire of the Practice of the Security Council*, as well as the trust fund for the elimination of the backlog in the *Repertory of Practice of United Nations Organs*, and the sponsoring, on a voluntary basis, and with no cost to the United Nations, of associate experts to assist in the updating of the two publications;

(c) Call upon the Secretary-General to continue his efforts towards updating the two publications;

(d) Recognize the desirability of making available electronically the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* in all their respective language versions.

Chapter VII
Working methods of the Special Committee and identification of new subjects

A. Working methods of the Special Committee

61. In the general exchange of views held at the 249th meeting of the Special Committee, Japan recalled that during the 2005 session it had submitted, together with the other co-sponsors, namely, Australia, the Republic of Korea, Thailand and Uganda, a revised working paper on the working methods of the Special Committee, contained in paragraph 74 of the report of the Special Committee for 2005, which incorporated comments made by delegations. The sponsor delegation stressed the crucial need to improve the working methods of the Special Committee and to enhance its efficiency, and expressed its hope to have the working paper finalized during the current session.

62. Some delegations expressed support for the revised proposal and observed that such a reform was necessary in order to revitalize the Special Committee, especially in the general context of the reform of the Organization. Some other delegations expressed doubts as to the soundness of adopting new methods of work for the Special Committee and of putting limitations on its duration.

63. At the 3rd meeting of the Working Group, Japan reiterated the need to improve the performance of the Special Committee as a part of the ongoing process of major reform of the United Nations. It emphasized that sincere efforts had been made to accommodate different views in the revised text, and expressed the hope that the latter would be adopted by consensus at the current session of the Special Committee and submitted to the General Assembly.

64. The sponsor delegation pointed out that the amendments made to the text of the working paper appeared in bold in paragraph 74 of the report of the Special Committee for 2005, and explained that the additions in subparagraph 74 (a) (i) had been introduced in response to comments made by delegations at the 2005 session of the Special Committee. The sponsor delegation clarified that the reference to the General Assembly resolution, contained in the preambular paragraph, would be updated.

65. Several delegations reiterated their support for the revised working paper and expressed the wish that it be adopted by consensus at the current session of the Special Committee. Some delegations emphasized the modest language employed in the text, which was not obligatory and was characterized as an important first step for the revision of the working methods of the Special Committee.

66. Other delegations stated that the revised text was not mature enough for adoption by the Special Committee at the current session. The point was made that the work of the Special Committee was subject to the rules of procedure of the General Assembly and doubts were raised as to the appropriateness of elaborating specific rules for the Special Committee. Concern was expressed about the attempts to limit the possibilities of introducing new proposals in the Committee. It was observed that improving the working methods of the Special Committee should facilitate its productivity. It was also observed that subparagraphs 74 (b) (i) and (ii) could be merged.

67. The view was expressed that a lack of political will, rather than the inadequacy of the working methods of the Special Committee, had prevented the latter from making substantive progress. Others pointed to the unique character of the Committee as an organ of the General Assembly whose mandate covered the entire Charter of the United Nations, which made it difficult to agree on matters which touched the role of other organs of the United Nations. It was emphasized that the difficulties were generated by the consensus rule, and it was suggested that voting procedures should be employed when consensus was not achievable.

68. Some delegations expressed their opposition to the proposal made by the Secretary-General, in his recent report entitled "Mandating and delivering: analysis and recommendations to facilitate the review of mandates", to consider discontinuing the annual two-week deliberations of the Committee (see A/60/733, para. 109), as well as to the attempts to reduce the duration of the sessions of the Special Committee.

69. In response to the comments made, the sponsor delegation stated that, although some problems might be traced to the lack of political will, some aspects relating to the working methods of the Special Committee needed to be addressed. It also stressed that the Special Committee should not wait for the General Assembly to make decisions in this respect, and that the achievements at the current session of the Special Committee would have a positive impact on the discussions on the mandate of the Special Committee.

70. At the 5th meeting of the Working Group, Japan reported on the results of the informal contacts held on the revised working paper. The sponsor delegation reiterated that the latter was not intended to replace any existing rules of procedure which governed the work of the Special Committee, and that it only contained guidelines for the application by Member States of the relevant rules of procedure in the Special Committee.

71. Some delegations expressed their readiness to allow the adoption of the revised working paper by consensus, while expressing some reservations or raising some concerns. In particular, the point was made that the Special Committee should only be governed by the rules of procedure of the General Assembly. It was also observed that the implementation of the guidelines contained in the revised working paper might encumber the work of the Special Committee with procedural discussions.

72. Taking into account a suggestion made during the discussion, the sponsor delegation proposed to add, at the end of subparagraph (b) (i), a footnote to read: "The outcome of the preliminary exchange of views will not preclude further discussion or negotiation on the proposal in the Special Committee". The revised text reads as follows:

> "In response to a request made in accordance with paragraph 3 (e) of General Assembly resolution 60/23 of 23 November 2005, the Special Committee agreed on the following points to improve its working methods and enhance its efficiency:
>
> "(a) Any delegation wishing to submit a new proposal is encouraged:
>
> "(i) To bear in mind the mandate of the Special Committee as set out in General Assembly resolution 3499 (XXX) of 15 December 1975, and to

ascertain, to the extent possible, that the new proposal would not entail exactly the same work being done by other bodies on the same subject, without prejudice to the rights of delegations to make proposals;

"(ii) To submit the proposal as far in advance of the session as possible;

"(b) A delegation submitting a proposal is encouraged:

"(i) To request the Committee to conduct a preliminary exchange of views as to its usefulness for the Member States at the first meeting of the Committee, bearing in mind the right of each State to submit proposals in keeping with the mandate of the Special Committee;*

"(ii) After an exchange of views is held on its proposal, to assess the priority of the proposal in comparison with other proposals discussed in the Committee, and to consider, where appropriate, the postponement or biennialization of the consideration of its proposal, without prejudice to the right of any States to submit proposals;

"(iii) After the proposal has been discussed at reasonable length, to ask the Committee, where appropriate, to look into the usefulness of further discussing the proposal, taking into account the likelihood of reaching a consensus in the future in the light of paragraph 5 of General Assembly resolution 50/52 of 11 December 1995;**

"(c) The Special Committee is determined:

"(i) To ensure that the meeting is conducted as efficiently as possible in order to rationalize the use of time and resources, including allocated conference services;

"(ii) To accord priority to the consideration of those areas on which general agreement is possible, bearing in mind paragraph 2 of General Assembly resolution 3499 (XXX) of 15 December 1975;

"(iii) To consider, where appropriate, the question of the duration of its next session with a view to making an appropriate recommendation to the General Assembly;

"(iv) To review as and when necessary other ways and means of improving its working methods and enhancing its efficiency, including ways and means of improving the procedure for the adoption of its report."

73. At its 6th meeting, on 12 April 2006, the Working Group recommended that the Special Committee adopt the working paper concerning its working methods as a decision. At its 250th meeting, the Special Committee decided to adopt the working paper contained in paragraph 72 above.

* The outcome of the preliminary exchange of views will not preclude further discussion or negotiation on the proposal in the Special Committee.

** In the event that a delegation submitting a proposal withdraws its proposal, such withdrawal does not preclude the delegation from subsequently resubmitting the proposal if the delegation considers that with the passage of time it has become more useful.

B. Identification of new subjects

74. At the 249th meeting, on 3 April 2005, Guyana, on behalf of the Rio Group, suggested that the Special Committee give special consideration to the addition of two items on the agenda of the Special Committee: "Review of the rules of procedures of the General Assembly" and "Consideration of the legal aspects of the reform of the United Nations" and indicated that it would further detail those proposals.

75. At the 4th meeting of the Working Group of the Whole, a delegation recalled the decision approved during the previous session of the Special Committee[22] regarding "the implementation of any decisions that may be taken at the High-level Plenary Meeting of the Sixtieth session of the General Assembly in September 2005 that concern the Charter of the United Nations and any amendments thereto".

Notes

[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.

[2] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1, A/58/346, A/59/334 and A/60/320.

[3] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 33* (A/59/33), para. 70; during the Committee's 1998 session, the Russian Federation submitted a working paper under the item maintenance of international peace and security, entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100) and a revised version thereof in 2000 (A/AC.182/L.100/Rev.1); during the Committee's 2002 session, an addendum entitled "List of proposals and amendments to the Russian working paper entitled 'Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation' introduced during the first reading of the paper" (A/AC.182/L.100/Rev.1/Add.1) was submitted and further revised versions of the working paper were introduced at the 2003 (A/AC.182/L.114) and 2004 (A/AC.182/L.114/Rev.1) sessions; also at the 2004 session, as a result of informal consultations, the Russian Federation submitted a further revised working paper during that session to be considered at the Committee's 2005 session (for the texts of the various proposals, see *Official Records of the General Assembly, Supplement No. 33*, for each respective year).

[4] Ibid., *Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 89; the working paper constituted a revision of the proposal submitted by the Libyan Arab Jamahiriya during the Committee's 2001 session (A/AC.182/L.110 and Corr.1) (see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 33* (A/56/33), para. 116).

[5] Ibid., *Fifty-second Session, Supplement No. 33* (A/52/33 and Corr.1), para. 58.

[6] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[7] bid., *Fifty-second Session, Supplement No. 33* (A/52/33 and Corr.1), para. 59.

[8] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 84.

[9] Ibid., para. 98.

[10] Ibid., *Sixtieth Session, Supplement No. 33* (A/60/33), para. 56; during the Committee's 1999 session, Belarus and the Russian Federation submitted a working paper, containing a draft resolution of the General Assembly (A/AC.182/L.104), in which it was recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal

consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence; at the same session, following discussions, the sponsors submitted a revised version thereof for future consideration (A/AC.182/L.104/Rev.1); a further revised version was submitted at the Committee's 2001 session (A/AC.182/L.104/Rev.2) (for the texts of the various proposals, see *Official Records of the General Assembly, Supplement No. 33*, for each respective year).

[11] Ibid., *Sixtieth Session, Supplement No. 33* (A/60/33), para. 74; during the Committee's 2000 session, Japan submitted a working paper entitled "Ways and means of improving the working methods and enhancing the efficiency of the Special Committee" (A/AC.182/L.107) and a proposal for a draft paragraph to be inserted in the report of the Special Committee to improve its working methods and enhance its efficiency (A/AC.182/L.108); Japan subsequently submitted a revised version of the latter working paper to the Committee at its 2002 session (A/AC.182/L.108/Rev.1) and during the 2003 session, Japan, together with the Republic of Korea as co-sponsor, submitted a further revised version thereof (A/AC.182/L.108/Rev.2); at the 2004 session, Japan, together with the co-sponsors Australia, the Republic of Korea, Thailand and Uganda, submitted a further revised version of the working paper (A/AC.182/L.108/Rev.3) and, following informal consultations, yet another revision thereof (A/59/33, para. 115).

[12] Resolution 60/23.

[13] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 33* (A/57/33).

[14] A/AC.182/L.89/Add.2 and Corr.1; see *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[15] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 33* (A/52/33), para. 59; and ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 84.

[16] Ibid., *Sixtieth Session, Supplement No. 33* (A/60/33), para. 56.

[17] Resolution 2625 (XXV), annex.

[18] Resolution 37/10, annex.

[19] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 4* (A/60/4), para. 9.

[20] Resolution 2625 (XXV), annex.

[21] Resolution 37/10, annex.

[22] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 33* (A/60/33), para. 77.

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